

Good's Transportation Service, Inc. and Teamsters Local 375, affiliated with International Brotherhood of Teamsters, AFL-CIO. Case 3-CA-15404

October 22, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On June 29, 1990, the National Labor Relations Board issued a Decision and Order,¹ inter alia, ordering Good's Transportation Service, Inc., to transmit the required contributions to various health and welfare and pension funds and to make whole unit employees for any loss of benefits occurring as a result of the failure to make contributions to the funds in violation of the National Labor Relations Act. On July 11, 1991, the U.S. Court of Appeals for the Second Circuit issued a judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due discriminatees, on May 29, 1992, the Acting Regional Director for Region 3 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.²

By letter dated July 7, 1992, the Regional Director advised the Respondent that if an answer is not received by the close of business July 17, 1992, he in-

tended to move for summary enforcement and a finding by the Board that the compliance specification allegations be deemed to be admitted to be true and that the Board so find and issue an appropriate remedy. The Respondent filed no answer.

On September 20, 1993, the General Counsel filed with the Board a motion to transfer case and to continue proceeding before the Board and for summary judgment and issuance of a Supplemental Decision and Order, with exhibits attached. On September 22, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On October 5, 1993, New York State Teamsters Conference Pension and Retirement Fund filed a brief in support. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

Ruling on Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the amounts due the benefit funds on behalf of the bargaining unit

¹ 298 NLRB No. 154.

² The compliance specification and letter sent by certified mail were returned with the post office return receipt indicating that the Respondent's forwarding orders had expired. On August 14, 1992, the Region sent a copy of the compliance specification and a letter dated August 14, 1992, by certified mail to the Respondent's president notifying her that unless an answer to the compliance specification was received by close of business on September 14, 1992, summary judgment would be sought. The compliance specification and letter were returned by the Postal Service as unclaimed. The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

employees are as stated in the compliance specification and we will order payment by the Respondent of said amounts to the funds.

ORDER

The National Labor Relations Board orders that the Respondent, Good's Transportation Service, Inc., Lockport, New York, its officers, agents, successors, and assigns, shall make whole the funds on behalf of the bargaining unit employees by paying the amounts set forth below:

	<i>Health & Welfare</i>	<i>Pension</i>
September 1990	\$705.60	\$2,184.52
October 1990	705.60	2,184.52
November 1990	873.60	2,730.67
TOTAL	\$2,284.80	\$7,099.71

Dated, Washington, D.C. October 22, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD